

The BAR ASSOCIATION BULLETIN

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The BAR ASSOCIATION BULLETIN

VOL. 4

SEPTEMBER 20, 1928

No. 1

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The President's Page

*Fellow Members,
Los Angeles Bar Association:*

Now that the vacation period is practically over meetings of the Association and of committees are being held and the work of our organization is going forward. For some, notably the Judiciary Campaign Committee, there was no opportunity for rest.

I trust that each committee will now meet and continue its work without further suggestion from your officers.

In August, a very difficult month, your Association successfully entertained the visiting American Bar Association members and families, providing several days entertainment, the expense of which was borne entirely by a few of our members who subscribed the necessary funds. I believe that our visitors were sincere in their expression that they were never so delightfully entertained. Some criticism has been expressed by a few of our members because the dinner was six dollars a plate and the affair formal, but I am sure the general sentiment would be in favor of that character of entertainment for our distinguished guests. It is of course to be regretted if any of our good members felt unable to attend because of the formality of the occasion, for it is the desire of your officers to make the meetings available to all. It was a signal honor paid our bar and the bar of the whole State when our esteemed fellow member, Hon. Gurney E. Newlin, was elected president of the American Bar Association, and we who know him intimately fully appreciate that he will bring to that great office distinguished ability as a lawyer and an executive and capacity for the arduous duties of that position.

STATE BAR MEETING, OCTOBER 11, 12, 13,
PASADENA

Are the members going to turn out in force for this meeting? It is so close to home that there is no excuse for neglecting the opportunity of taking part in these important deliberations.

The Board of Governors has already done a great work for the bar, and few realize the time, effort and ability which that board has devoted to the novel problem of organization of a self-governing bar. In

my estimation the work has been done on a very democratic basis, and it behooves the bar as a whole to attend this meeting and show that we intend to take a direct and controlling interest in every problem. The well grounded, thoughtful element in the bar should be present, for the Board of Governors will naturally look for guidance, and the deliberations must reflect the best thought of which the members are capable.

In one regard I personally do not agree with the present policy of the State Bar. I do not believe in the ultra democratic plan of appointing volunteers, without selection, to State Bar Sections. The result to date has been that some of the sections are largely made up of men who are not at all qualified to pass judgment on the work before the sections, and in some instances foolish, half digested reports of sub-sections are being issued for general publication, which puts the whole bar in an improper light. Any one with half an eye can see that the public will be confused, the cause of the bar injured, and the various hair-brained propositions will never pass the general delegates or the Board of Governors.

Whatever our powers as individual members of the State Bar may be, and they are none too specific, we should attend these meetings, and the high standing and character of the members of our Board of Governors are a guarantee that the well considered wishes of the great majority will be followed.

THE ELECTION OF JUDGES

Despite mud slinging from without and some sniping and disloyalty to our Association and its ideals from within, and notwithstanding the lethargy of very many of our members, we carried out, to the best of our ability, our duty, as we are charged under your By-Laws, of conducting the plebiscite for judicial candidates and informing the public of those endorsed. It will require further and consistent work to apprise the public of our aims and efforts, and our greatest difficulty lies in overcoming false publicity by those interests seeking private benefit. Were the Association to stoop to anything approaching the methods of those who oppose its unselfish efforts, the result would be temporarily certain and successful, but in the long run

the bar would suffer. Men are not as important as the principle which is back of the plebiscite and our duty to make the results known to the public.

In connection with the recent election, no criticism of, or attack on, any candidate was made by your Association, and the work of your Association consisted in constructive endeavor on behalf of candidates who had been endorsed in your plebiscite. At a later time when space allows I shall completely outline my own views on improvement of the plan and mechanics of the plebiscite and hope also to suggest an addition to the plan which will satisfy

all. I feel that further occasion should be provided for every member fully to express himself and to lend his aid to the Association in developing the plan of the plebiscite and endorsement of judicial candidates to a point where all open minded members are substantially satisfied; and thereafter, if we find men within our ranks who willfully work against the aims and ideals of our Association and misrepresent its efforts, we should not embarrass them or the organization by continuance of their relation as members.

H. T. MORROW.

THE BULLETIN CITED AS AUTHORITY IN DECISION OF APPELLATE COURT

In the case of Lane Mortgage Company v. Crenshaw, 56 C. A. D. 1163, decided August 3, 1928, by the California District Court of Appeal, reference is made in sup-

port of the position of the court to the article, "Declaratory Relief in California," by W. Turney Fox, published in Volume II, Number 2 of the BAR ASSOCIATION BULLETIN. In this recognition, the first occasion the Bar Association's official publication has been cited as authority by an appellate court, the BULLETIN takes justifiable pride.

Justice Parker delivering the opinion of the court, states as follows:

"This case presents a controversy to which declaratory relief peculiarly applies. Presenting, as it does, the unusual situation of a lessee and agent in control of a valuable twelve-story building, through a lease and agency covering one floor thereof, it cannot but be anticipated that the rights of the respective parties may continue to be the subject of prolonged litigation. It was just such a case that the provisions of our law regarding declaratory relief were designed to meet and accommodate. See *Blakeslee v. Wilson*, supra, and cases and articles cited therein. See also article by W. Turney Fox, professor of law, University of Southern California, in *Bar Association Bulletin*, volume II, No. 2, September 16, 1926, with authorities cited."



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On the Art of Legal Draftsmanship

By JOSEPH P. LOEB of the Los Angeles Bar

Legal draftsmanship is the art of expressing redundantly the greatest conceivable number of ambiguities in which an idea may be concealed.

One of the most important and extensive branches of the law deals with those rules whereby uncertainties, whether in statutes or in contracts, are construed. This being so, obviously it is incumbent upon legal draftsmen to incorporate ambiguities in documents drawn by them, in order to revitalize and perpetuate this great mass of crystallized wisdom. What a pity it would be, if all laws, contracts, testamentary and other instruments were written clearly, briefly, in the every-day vocabulary of business, so that no doubt could arise as to their intended meaning, thereby rendering obsolete all the complex marvelous formulae by which we are enabled to determine the intention of the authors and destroying the value, except as interior decorations and stage properties, of whole volumes of text books on the subject, and page after page of encyclopedic articles!

Special considerations attach to the drafting of statutes to be passed by our various legislative bodies, whether federal or state, or by that essentially democratic process known as the initiative.

It is a fact, so generally understood that it need not be elaborated upon here, that our national and state governments, which of course are The People, have invested tremendous sums in the construction, maintenance, and operation of hundreds of elaborate and in many instances luxurious institutions for the housing and care of those who violate that part of the body of the law relating to crimes. It also is well known that many of those who in the past enjoyed or now are enjoying the hospitality of those institutions became guests of the commonwealth because of acts which did not appear criminal until one or more courts had determined what was meant by an uncertain or unintelligible law. Simplification and clarification of such laws would result at once in a noticeable decrease in the patronage of institutions of the character referred to, possibly to such an extent that vacancies therein would be as

common as they now are in apartment houses and small stores throughout the country. Such destruction of the public assets should be avoided, and can be, by the perpetuation of existing methods of legal draftsmanship as applied to the preparation of penal statutes.

It is submitted that the catastrophe above referred to is not so imminent as to cause anxiety. Statutes drafted by our various legislative bodies continue to retain that classical ambiguity which has distinguished for countless centuries the noble art which we now are discussing; and an examination of the Usury Act of the State of California will convince the timid that even The People have not departed from the best traditions of legal draftsmanship.

The drafting of private documents such as contracts and wills is a science of such scope and importance as to be worthy of special and separate consideration; but the limitations of time and space necessitate that in this lecture the discussion of the drawing of statutes, penal and otherwise, and of wills and contracts, be consolidated in so far as is consistent with a logical and not unduly direct or concise treatment of the subject.

The first necessity under which the draftsman labors is the necessity of deciding in what language his document shall be written.

To the careless and superficial the reply would seem obvious. Statutes of many States require documents filed with public officers to be written in the English language. However, these acts do not prescribe that such documents must be entirely in English nor do they specify whether the English which must be used, is modern, mediaeval or ancient. This permits of great latitude and affords to the draftsman full freedom to avoid that simplicity of diction which is employed by his unskilled contemporaries and which, if detected in formal instruments, would deprive them of that innate dignity which results only from the use of foreign and if possible obsolete or unknown words.

Numerous examples will occur to the reader.

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Thus "Femme sole" should be used always in preference to "old maid." "Ipso facto" is almost indispensable; so also is "per se." Many other Latin and French expressions are available for substitution for their Anglo-Saxon synonyms. The advantageous use of at least one of these will be demonstrated in a succeeding paragraph.

Words in common use should be avoided. Statistically inclined rhetoricians inform us that the article *the* is one of the most frequently used words in our vocabulary. Lawyers and other legal draftsmen have minimized its use for centuries by substituting the less busily-engaged *said*. In a recent decision of one of our appellate tribunals *said* appears thirty-seven times on one page, in active competition with the inartificial *the*, which appears only twenty-six times on the same page. Not only does this give to a writing an air of distinction, but by releasing so many *e's* for use in the essential words it actually results in an economy of type metal estimated to be sufficient to reduce the present high cost of living.

No legal instrument has that degree of completeness and that resonance of sound to which it is entitled unless it be embellished with frequent *whereases*. The mere tyro can compose a number of preliminary paragraphs of a historical, psychological or emotional character, in explanation of the motives of the legislative body or of the contracting parties, as the case may be, and by way of apology for what is to follow, each introduced by a large capitalized *WHEREAS*, but only true genius discovers opportunity to insert the word and its accompanying recitals unexpectedly, and

therefore the more effectively, in the midst of paragraphs that are supposed by the reader to prescribe what is to be done rather than why.

In the technique of legal draftsmanship few devices save the use of foreign languages are as useful as the proviso and the double proviso. The pinnacle of success in this particular may be said to have been attained by a certain learned and deservedly esteemed member of this bar who embellished an instrument with the truly cautious and trebly protected reservation: "Provided, however, nevertheless, and notwithstanding."

The importance of punctuation marks can not be over-stated. Omitted or properly placed, they may render the meaning of a sentence so clear that the necessity for construction is entirely eliminated. Skillfully used, as for example or, preferably, *ex-empli gratia**, the first semi-colon in section 309 of the California Civil Code, they promote immeasurably those learned and abstruse discussions which are of such vast intellectual interest and incidental financial profit to the profession and become living monuments to the draftsmen who placed them where they are.

It is vital also to bear in mind that the length of sentences is an important consideration. The short sentence in a document is intrinsic evidence of lay composition.

We close this lecture with the observation that the erudition of the author of a legal instrument varies directly as the distance between the subject and the predicate and as the square of the width of the split between different portions of the same infinitive.

*NOTE: This is the Latin expression the use of which was prophesied above.

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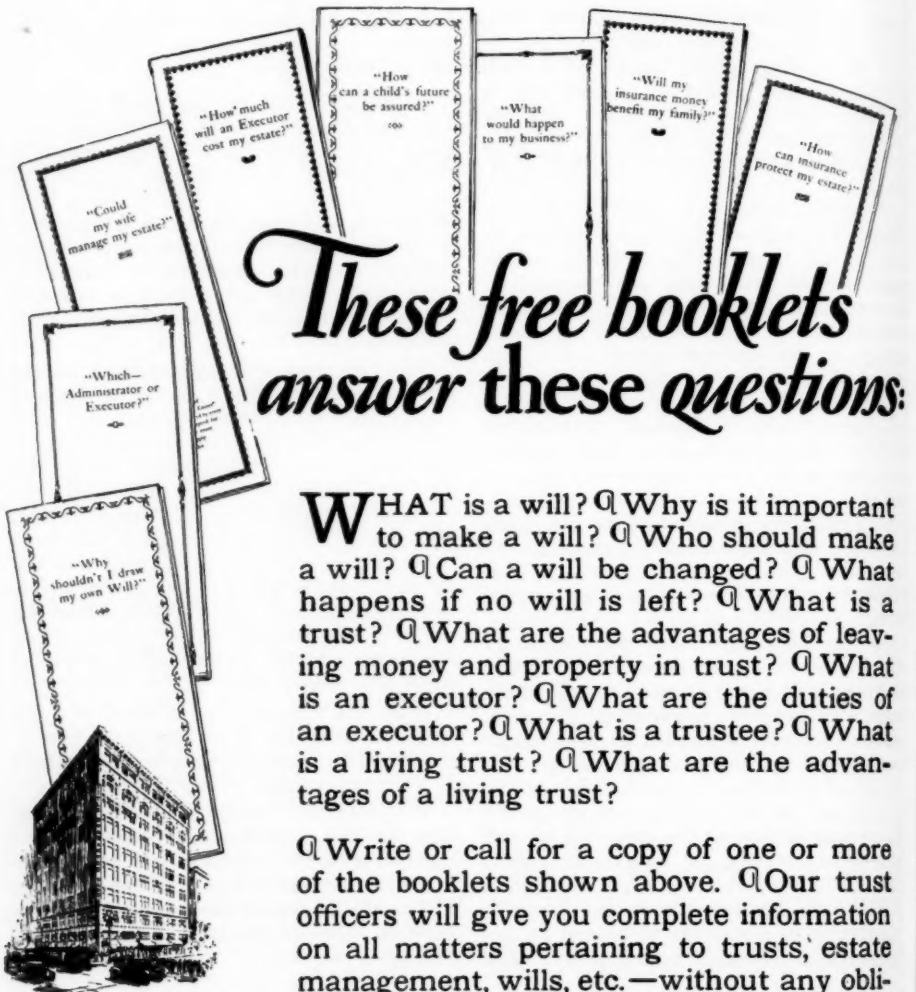
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TENTATIVE PROGRAM OF FIRST ANNUAL MEETING

The State Bar of California

Hotel Huntington, Pasadena, October 11, 12 and 13, 1928

THURSDAY, OCTOBER 11, 1928

8:30 o'clock

President Joseph J. Webb, presiding.
 Appointment of Canvassing Boards.
 Canvass of Ballots.
 Address of Welcome.
 Response.

Report of Canvassing Boards and announcement of result of election.
 Report of Secretary and Treasurer.
 Report of Proceedings of Board of Governors—Albert A. Rosenshine, secretary and treasurer of The State Bar of California.

Report of Committee of Bar Examiners—Geo. F. McNoble, chairman.

Report of Committee on Cooperation with American Law Institute—H. C. Wyckoff, chairman.

Report of Committee on Legal Ethics — Hon. Max C. Sloss, chairman.

Address—Subject and speaker to be announced.

12:30 o'clock

General Membership luncheon.

2 o'clock

Address by Hon. C. C. Young, Governor of California.

If practicable, without interfering with the program, the Local Committee of the Chamber of Commerce will arrange for a visit to the California Institute of Technology from 5:15 to 6:15 p.m.

6 o'clock

Dinner Meeting of Members of Local Administrative Committees with brief addresses and round-table discussion.

8 o'clock

Eugene Daney, vice-president, presiding.
 Annual Address—Joseph J. Webb, president, The State Bar of California.

Report of Committee on Revision of Corporation Law—William H. Gorrill, chairman.

Report of Committee on Reserve Power of Members—Perry Evans, chairman.

FRIDAY, OCTOBER 12, 1928

9 o'clock

Hon. J. M. Inman, vice-president, presiding.

Report of Section on Civil Procedure.

Report of Section on Criminal Law and Procedure.

Report of Section on Regulatory Commissions.

Report of Section on Courts and Judicial Officers.

Report of Section on Professional Conduct.

12:30 o'clock

Luncheon Meeting of Law School Alumni and Fraternity Members. Address by Justin Miller, dean of U. S. C. School of Law. Brief addresses and round table discussion.

2 o'clock

Meeting of Judicial Section—Hon. John Perry Wood, chairman; Hon. Harry A. Hollzer, secretary. Topics and speakers to be announced.

6 o'clock

Dinner Meeting—Judicial Section—Hon. William H. Waste, Chief Justice of California, presiding. Other speakers to be announced.

Dinner Meeting of Section Delegates with brief addresses and round-table discussion.

8:30 o'clock

Entertainment at Pasadena Community Play House.

SATURDAY, OCTOBER 13, 1928

9 o'clock

Gurney E. Newlin, president American Bar Association, presiding.

Unfinished business.

Administering oath to Governors-elect.

New business.

(Governors will meet to organize new board.)

2 o'clock

Visit to Mt. Lowe.

Visit to Universities.

(Details to be arranged by local committee.)

7 o'clock

Annual Banquet—Joseph J. Webb, president of The State Bar of California, presiding.

Addresses by Milton Schwartz, of Los Angeles; Gurney E. Newlin, president American Bar Association.

Induction of new president to office.

Star-Spangled Banner.

Adjournment.

Case Note

EXCESSIVE VERDICTS AND THE UNSTABLE DOLLAR

Aside from the question of a release based upon a mutual mistake of fact not being binding upon the plaintiff, the case of *O'Meara v. Hayden and Henderson*, 75 Cal. Dec. 801, June, 1928, is deserving of more than passing mention. Because of the novel element introduced in the opinion as will hereinafter appear the case is bound to exercise a far-reaching influence. In sustaining the action of the lower court in awarding \$10,000.00 damages for the death of plaintiff's seven year old son, the Supreme Court held that the verdict was not excessive. The court, sensing an economic problem, brushed aside legal precedent, stepped from the wool sack into the market-place, and treated the matter in realistic fashion.

The court was in no mood to follow precedent, stating on page 810: "In view of the changed conditions that now prevail from those that existed some ten years ago, we do not feel that we would be justified in following at this time the views expressed by the court in *Niezorak v. Ferris*, 176 Cal. 353 (1917) regarding the subject of excessive verdicts."

The court however decided to create a precedent, stating: "We must, as courts in other jurisdictions have done in passing upon similar questions as that involved herein, take judicial notice of the fact that the value of the dollar has materially changed from what it was some ten to fifteen years ago. Whether it is 'cut in half' as intimated by the excerpt from one of the above mentioned authorities, or not, it is universally admitted that it has materially decreased in value from what it was a few years ago. There has been a corresponding increase in wages and salaries as well as in the cost of living in all walks of life. The sum of ten thousand dollars when measured by its present purchasing power is far less than what it formerly was. A verdict, therefore, in this amount for personal injuries may well be sustained by the courts of today, when formerly it would have been their duty to set it aside as excessive."

The court cited with approval the case of *Bowes v. Public Service Ry. Co.*, de-

cided in 1920: "At a period when the purchasing power of the dollar has in language of the day been 'cut in half', the value of the sum awarded here is not to be estimated in the numerical quantum of the recompense, but in its comparative ability to furnish the necessities of life."

And also, in the case of *Quinn v. Chicago, M. & St. P. Ry. Co.*, 202 N. W., 275, the supreme court of Minnesota said: "In recent years there has been a noticeable increase in the size of verdicts in personal injury cases. The courts approve of verdicts today which would have been unhesitatingly set aside as excessive ten or fifteen years ago. Measured in money, the earning capacity of most men has increased; measured by its purchasing power, the value of a dollar has decreased. No immediate change in the situation is in sight. It is only right that these well known facts should be taken into consideration."

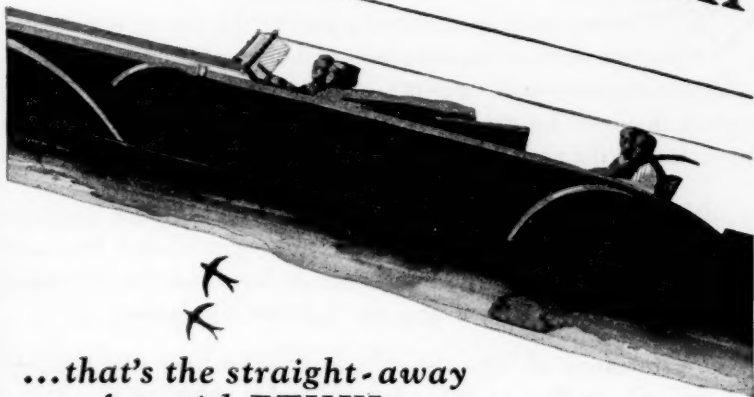
The court, in thus eloquently calling attention to the instability of the dollar, cast its lot with the school of economists, headed by such men as Dr. Irving Fisher, Dr. E. W. Kemmerer, Dr. John Parke Young and Norman Lombard, who are trying to awaken the community to the dangers of an unstable dollar. This decision is therefore, of momentous concern to the lawyer who advises clients on financial matters, or who handles investment funds, long term leases or contracts payable in future dollars.

It becomes the bounden duty of every lawyer to familiarize himself with the capriciousness of the supposedly stable dollar, its knack of contracting and expanding, as evidenced by an increase or decrease in purchasing power, working havoc, now to the debtor class and now to the creditor class.

It especially behooves the trial lawyer to be mindful of the drift of commodity prices, for the court having taken judicial notice in this case that the dollar has shrunk, may see fit in the future, if the facts warrant same, to take note of the fact that the dollar has stretched. The commodity index will be a safer guide for the lawyer in the future to follow than blind legal precedent.

MAURICE SAETA.

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- 1 Necessary or proper parties defendant with sufficient additional data to indicate clearly the respective rights of each, the nature and relative priority of the interest in or lien upon the mortgaged realty, and the liability, if any, for deficiency judgment.
- 2 A statement of liens, encumbrances and other matters superior or prior in time to the mortgage under consideration. This, of course, includes a list of delinquent or unpaid taxes or assessments which materially affect the interest of the mortgagee and often require prompt attention.
- 3 Detailed information as to corporate organization and status and similar data as to any court action, either civil or probate, in so far as is necessary to determine the identity or qualification of proper parties to the proposed foreclosure.
- 4 The mailing address of the parties or their attorneys, as disclosed by the Recorder's mailing list and files of court actions.

THE COMPLETENESS OF THE INFORMATION GIVEN
WILL BE THOROUGHLY APPRECIATED BY ATTORNEYS

Title Insurance and Trust Company

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Attendance Honor Roll

This issue marks the third appearance of the attendance honor roll, the list of regular attendants at Bar Association monthly meetings during the present administration year.

The roll (from which is excepted the officers and trustees of the Association), covering all meetings prior to the September meeting, is as follows:

MEMBERS WHO HAVE ATTENDED ALL MEETINGS

Arthur G. Baker
Charles E. Beardsley
Judge Fletcher Bowron

C. F. Cable
Norval J. Cooper
Robert M. Cordill
Judge Thomas C. Gould

Percy V. Hammon
Albert B. Harris

Walter P. Kirksey
Judge Marshall F. McComb
Edwin J. Miller
James E. Minds

Ezra Neff
Vere Radir Norton

G. Roy Pendell
Judge James H. Pope
R. H. Purdue

Rugby Ross

John W. Satterwhite
Clement L. Shinn
Judge Joseph P. Sproul
Judge Albert Lee Stephens

Judge Clair S. Tappaan

Judge Emmet H. Wilson

Robert Young

MEMBERS WHO HAVE ATTENDED ALL BUT ONE MEETING OR ALL BUT TWO MEETINGS

(An asterisk before a name indicates that the member has attended all but one meeting.)

*Judge William T. Aggeler
Will Anderson
Claude Andrews
*Judge Harry R. Archbald
*Ella M. F. Atchley
*Robert E. Austin

Joseph S. Baddour
Judge Daniel Beecher
C. O. Bettys
John E. Biby
*Florence M. Bischoff
Judge Edward T. Bishop
E. H. Blanche

*B. J. Bradner
*J. Calvin Brown
Willard W. Burgess
Judge Chas. S. Burnell

Carl E. Cameron
*Charles Cattern
Mabel Clausen

William T. Coffin
*Paul F. A. Conway
Grant B. Cooper

*Judge Elliott Craig
*Judge Hugh J. Crawford
William Crop

G. C. DeGarmo
*Charles De Le Fond
Judge Walter J. Desmond
Leonard A. Diether
Dora Dukeshire

Hamish B. Eddie
Judge Douglas L. Edmonds
Kimpton Ellis

Harold A. Fendler
Judge Frank Finlayson
Clara Shortridge Foltz
W. Joseph Ford

*Edmund Fortune
Hugh Foster
W. Turney Fox
*A. W. Francisco
Samuel H. French
Martin C. Frincke, Jr.

*John M. Fulton
R. M. Fulton

*Judge R. Morgan Galbreth

*J. M. Gammon
*Herbert Ganahl

*Leo. B. George
W. I. Gilbert
A. S. Goldman

*Richard C. Goodspeed

Wm. J. Hanlon
Joseph Hansen
Judge Carlos S. Hardy

*Judge William Hazlett
Clarence M. Heublein
Ray Howard

John A. Jorgenson

Caroline Kellogg
Hiram T. Kellogg
Gerald C. Kepple
*Saul S. Klein

May Lahey
*E. A. Lane
Dana Latham
*Frank Lehan
Allan L. Leonard
*Lester O. Luce

R. C. McAllaster
Judge Wm. D. McConnell

*J. Donald McGuire
*Judge Victor R. McLucas
R. L. McNitt

Wm. DeF. Mann
Robert Mitchell
*Judge Chas. C. Montgomery

Ray L. Morrow
Mildred Murphy
*Charles Murstein
Flora B. Nelson
Nathan Newby, Jr.

Lawrence L. Otis

N. D. Papa Dakis
I. F. Parker
Lyle Pendegast
L. H. Phillips
Edmund W. Pugh

Wm. P. Redmond
H. G. Redwine
Nowland M. Reid
Wm. H. Robinson
I. R. Rubin
*Milan E. Ryan

Maurice Saeta
Richard Hunt Sampson
*Norbert Savay
Henry Schaefer, Jr.
Judge B. Rey Schauer
John Schlegal
*Jacob F. Schwartz
*J. B. Selters

Harry Sewell
Howard F. Shepherd
*Julius Smidt
Arthur R. Smiley
W. Cloyd Snyder
M. C. Spicer
C. A. Stice
Z. B. Stuart
Oscar A. Trippet
Judge Raymond I. Turney
*Frank G. Tyrrell
*Archibald H. Vernon
Joseph W. Vickers
C. T. Vincent

*S. Bernard Wager
*George E. Waldo
Benjamin T. Weinstein
*Ida V. Wells
Erwin P. Werner
Judge Myron Westover
Sydney Wetzler
Judge Henry M. Willis
Meyer Willner
Judge H. Parker Wood
*Sidney P. Wood
*Roland Rich Woolley
Judge Leon R. Yankwich

GOLF COMMITTEE ANNOUNCEMENT

The Committee on Golf of Los Angeles Bar Association will stage the first regular monthly tournament of the season at Palos Verdes Golf Course on Palos Verdes Estates (adjoining Redondo Beach), Saturday, September 29th, at 10 a.m.

Return postal cards are being sent out to all golfing lawyers on the Committee's list. Any member of the Association desiring to participate in the tournament who is not on the list, should communicate with E. E. Noon, chairman of the Committee, 830 Merchants National Bank Bldg., VAndike 8881.

In order that each player will be given an equal opportunity to participate in the prize winning, the tournament will be of a specially devised form, based on handicap, and will be played in three classes.

A LETTER OF ACKNOWLEDGMENT

Mr. Joseph W. Vickers,
Bank of Italy Building,
City.

837 I. N. Van Nuys Building,
Los Angeles, California.
September 7, 1928

Dear Sir:

On behalf of the Association I wish to thank you for the work and result accomplished in presenting the Kimmerle parole matter to the Superior Court, when the Los Angeles Bar Association was recently called upon to act for the Court.

This matter involved many days of your time, concerned questions which were unique, and altogether the work, for which you received no compensation, was far beyond anything I conceived when I requested you to undertake the matter. To the best of my ability I followed your handling of the case, and I wish to compliment you for the ability with which it was presented and argued.

I have requested that this letter of acknowledgment be published in the BULLETIN as some slight recognition of your services to the Association and to the Court.

Sincerely yours,

(Signed) H. T. MORROW.

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